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Fax

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From: R. Jay Marshall
Date:
Subject: *Raptor changes*
Pages: *12 + cover*

Incoming
12/07/0013

Comments:

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From the desk of...
R. Jay Marshall
UtahAmerican Energy, Inc.
Price, Utah 84501

Response to Jerriann's Raptor Comments:

Note: Red line page number do not match the Permit text numbers because of reformatting.

1. **RAPTORS:** Include the 2005 raptor survey results (Remember to submit this document as confidential. Mark the document/map "Confidential". Separate the document from the rest of the submittal in a separate folder marked "Confidential". Locate the document in Confidential Binder, Appendix 3-5.)
As was discussed the 2005 raptor survey results were submitted on December 9, 2005. A single copy was submitted with the C2 form instructing that the 2005 raptor survey be posted to the confidential binder.
2. **RAPTORS:** Change any wording in the narrative portions of Chap. 3 (e.g., pg 10, 20 and possibly in Chap 5) that relates to raptors, raptor nest activity, or raptor surveys to agree with the 2005 survey. (Suggested search words: raptor, nest, and survey.)
Pages 10 and 19 were revised to reflect the 2005 raptor survey.
3. **RAPTORS:** Remove the sentence in the narrative portions of Chap. 3 (e.g., pg 10/11): *However, if this nest(s).....mitigation requirements.*
Paragraph was removed from pages 10/11.
4. **RAPTORS:** Include wording in the narrative portions of Chap. 3, pg 10 (just below the para "None of themitigation information).") that relates to the five-raptor nest located just above the surface facilities site. The USFWS and I suggest that you include something like the following: "Prior to construction and during operations UEI will coordinate closely with USFWS, DWR, and the Division to avoid 'take' of golden eagles."
Paragraph was added to pages 10/11.
5. **RAPTORS:** Change any wording in the narrative portions of Chap. 3 (possibly Chap 5) that discusses contacting agencies if raptors are observed nesting during raptor fly-over surveys. The contact order should read something like: *The Permittee will contact the USFWS, DWR, and the Division immediately following raptor fly-over surveys if raptors are observed nesting.* As it reads now, you'd contact the Division who would contact the other agencies. (Suggested search words: raptor, nest, and survey, USFWS, DWR.)
Paragraph was added to page 20.
6. **MSO:** Add wording in the narrative in Chap. 3, pg. 18 that relates to Mexican Spotted Owl. The USFWS and I suggest that you include something like the following: *An MSO two-year calling survey will be completed according to Appendix 3-4. This two-year calling survey will include four nighttime surveys with no more than one survey prior to end of April and at least three surveys*

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will coordinate closely with USFWS, DWR, and the Division to avoid "take" of golden eagles.

The BLM-lead mitigation project is based on the premise that there is sufficient nest sites in the area to accommodate the population base. The limiting factors appears to be available prey base. Mitigation is designed to enhance the prey base while concurrently enhancing habitat for big game, deer, elk, and bighorn sheep.

In addition, there are a number of aquatic Threatened and Endangered (T&E) species associated with the Colorado drainage systems. In the Lila Canyon Permit Area, there are no perennial streams, or ephemeral drainages which are in close enough proximity to perennial streams which could pose a potential threat to any aquatic species.

322.230. All known species or habitats needing special protection under state or federal law have been addressed.

322.300. Adequate copies of the Mine Reclamation Plan have been submitted to the Division to allow for distribution to the Fish and Wildlife Service for their review.

323. Maps or aerial photographs of the permit area and adjacent areas have been provided. Plate 3-1 Wildlife Habitats, is a map that shows all critical habitat, raptor nests and all special habitat features. This plate will be updated on an as needed bases to reflect current conditions such as new raptor nests and/or changes in wildlife use.

323.100. The location of the proposed reference area is shown on Figure 1 of Appendix 3-1. Appendix 3-1 is the report for the 2003 vegetation inventory. The reference area for the mine site disturbance was established during the summer of 2003. The reference area was chosen in an

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existing raptor nests from subsidence. All nests within a ½ mile radius of the surface facilities were assumed lost due to indirect disturbance associated with mine activities. The Lila Canyon EA # UT-070-99-22, outlines mitigation recommended through a cooperative effort between Utah Department of Wildlife Resources, Bureau of Land Management, U.S. Fish and Wildlife and UtahAmerican Energy, Inc. where mitigation would be implemented to increase prey base off-site. The construction of alternative nests was considered to be ineffective. Eagle distribution was not limited by suitable nest sites but by available prey.

An MSO survey will be completed according to Appendix 3-4. Results as described in Appendix 3-4 will be reported to the Division, UDWR, and USFWS. An MSO two-year calling survey will be completed according to Appendix 3-4. This two-year survey will include four night time surveys with no more than one survey prior to end of April and at least three surveys prior to end of July. Results will be submitted to USFWS, DWR, and the Division immediately following of each night time survey. If owls are observed, the agencies will reopen the consultation process immediately following the night time survey that observed the owls.

Construction at the mine to upgrade drainage controls and to construct the road will have a minor impact on wildlife in the area. The impact will mainly be increased human activity associated with the construction and a small, less than 42.6 acre, loss of habitat for the mine site, roads and sedimentation pond. These impacts will have little or no affect on the wildlife because they will be completed in an environmentally sound manner.

UEI will instruct all personnel as to current regulations regarding the use of off-road vehicles, firearm regulations, and where current UDWR proclamations are available. This training will be part of the annual refresher offered to all employees. The company will encourage strict compliance with these regulations.

DWR will be notified of any road kills involving large game and request to have them removed to safeguard raptors. Mine personnel will be instructed to remove road kills a safe distance from the road way.

The Lila Canyon Mine has agreed to mitigate the loss of wildlife

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4. Possible restrictions on firearms on the mine site, and restrictions on off road vehicle usage to lessen disturbance.
5. The Operator will ensure that DWR surveys for cliff nesting raptors within proposed facilities areas at least two years prior and one year following construction. The Division, in consultation with DWR, cleared the two consecutive year requirement if the mine begins construction sometime between 2005 and February 2006. This clearance is because UEI already had eight years of data as well as data for spring 2005. The Operator will continue annual raptor surveys in 2006.
6. An active golden eagle nest, with young, was documented during the 1999 spring raptor survey. The nest is located in the left fork of Lila Canyon within the 1-mile buffer zone. (See Plate 3-1). A consultation with USF&W, BLM, and UDWR was held in the fall of 1999. Line of site and potential mitigation was addressed during this meeting. The results of this consultation are addressed in Sec 322.220 and the Lila Canyon EA. This nest was not active in 2000, 2001, 2002, or 2003. A survey was not done in 2004. In 2005 nest 946 contained a possibly dead chick. (See Appendix 3-5 for updated inventories)
7. The Operator will adhere to exclusionary periods when initiating construction and final reclamation projects. The exclusionary periods include: raptors (Feb 1 - July 1), Bighorn sheep lambing (May 1 - June 15), and Pronghorn (May15 - June 20).

The Applicant does not plan to monitor any wildlife species during the life of the operation with the exception of raptors. Helicopter spring raptor surveys will be conducted at a minimum of a 1-mile radius around any new or potentially disruptive mining activity, 2-years prior and annually after the proposed activity

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Permittee will contact the USFWS, DWR, and the Division immediately following raptor fly-over surveys if raptors are observed nesting.

The mine will emphasize their commitment to legal requirements of firearm and off-road vehicle-use by employees. This type of program has been adopted by the operator and will continue throughout the operation. An education program aimed at minimizing potential negative impacts by employees will be presented during the Operators annual retaining programs. Employees will be informed about the wildlife in the area and about which species are protected. They will be counseled to refrain from poaching or harassing animals and about the need to preserve the wildlife. They will also be instructed on the danger of animals on the road during dusk and night hours and consequently the need to reduce speed to avoid colliding with animals difficult to see in these periods of poor light. All threatened or endangered wildlife sighted within or adjacent to the permit area will be reported to the appropriate state and / or federal agency.

The location and construction of the haulage road, as well as measures for the protection of surface hydrology, from sedimentation, including the sedimentation pond and other drainage control structures, are discussed in Chapter 7, Hydrology.

Any waters discharged from the facility will be monitored in accordance with UPDES Permit No.UTG040024. Major disturbances will be scheduled to avoid deer / antelope fawning times.

No use of pesticides or chemicals that have serious consequences to plants or wildlife will be used on the permit area, unless recommended by a regulatory agency and under their direction.

Prevention of fires and their spreading outside the permit area will be accomplished through; water sprays, and fire extinguishers located at all facilities . Wild fires will be addressed by the appropriate state and federal agencies. Operation and reclamation activities will be

Assessment submitted in association with the Right-Of-Way applications.

The USFWS recognizes that the permit area is within range of endangered species, including the black-footed ferret, MSO, and the bald eagle (Letter dated February 4, 1998, Appendix 3-3).

Raptor surveys were initiated in 1998 and continued ~~through 2005~~ annually with the exception of 2004. These surveys were initiated before ground-breaking of the Lila project. The results of these surveys are in Appendix 3-5. The entire Book Cliffs escarpment within the permit area was inventoried for cliff nesting raptors. In addition, a 1-mile buffer zone was inventoried around areas of potential development.

None of the Eagle nests in the close proximity to the mines surface facilities (less than 1/4 mile) have been active nor tended in the last three years. However, historically from 1998 to 2003, in 2005 nest 946 contained a chick that was possibly dead. Historically one active and one tended Golden Eagle Nest is within close proximity to the mines surface facilities. After consultation with USFW, Laura Roma, UDWR, Chris Colt, and BLM, Dave Mills, it was determined that there was a high probability these nest sites would be abandoned. A cooperative agreement with the regulatory agencies and UEI was finalized and is made part of the mitigation for the Lila Canyon EA. One nest discussed above, also lies in an area of potential subsidence which is a mute point due to its close proximity to the mine site. Since the nests are located so close to the mine surface facility, their future potential use was deemed to be lost and were so mitigated by a prey base off-site vegetation treatment project approved by the USFWS, UDWR and BLM (See page 19 for BLM mitigation information).-

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However, if this nest(s) or any future nest is lost as a result of mining activities (subsidence), UEI is committed to working with the Division who will then consult with USFWS and UDWR for mitigation requirements.

Prior to construction and during operations UEI will coordinate closely with USFWS, DWR, and the Division to avoid "take" of golden eagles.

The BLM-lead mitigation project is based on the premise that there is sufficient nest sites in the area to accommodate the population base. The limiting factors appears to be available prey base. Mitigation is designed to enhance the prey base while concurrently enhancing habitat for big game, deer, elk, and bighorn sheep.

In addition, there are a number of aquatic Threatened and Endangered (T&E) species associated with the Colorado drainage systems. In the Lila Canyon Permit Area, there are no perennial streams, or ephemeral drainages which are in close enough proximity to perennial streams which could pose a potential threat to any aquatic species.

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DWR will be notified of any road kills involving large game and request to have them removed to safeguard raptors. Mine personnel will be instructed to remove road kills a safe distance from the road way.

The Lila Canyon Mine has agreed to mitigate the loss of wildlife habitat as well as the potential loss of habitat use due to disturbance.

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